

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
 : Docket #16m2011  
UNITED STATES OF AMERICA, :  
 :  
Plaintiff, :  
 :  
- against - :  
 :  
ANDREW CASPERSEN, : New York, New York  
 : March 28, 2016  
Defendant. :  
----- :

PROCEEDINGS BEFORE  
THE HONORABLE JAMES C. FRANCIS,  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: U.S. ATTORNEY'S OFFICE  
BY: CHRISTINE MAGDO, ESQ.  
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For Defendant: MCKOOL SMITH  
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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: U.S. v. Andrew Caspersen. Counsel,  
please state your names for the record.

MS. CHRISTINE MAGDO: Good afternoon, Your Honor,  
Assistant United States Attorney Christine Magdo on behalf  
of the Government. With me at counsel table is Kirk Caper  
(phonetic), a criminal investigator from my office.

THE COURT: Good afternoon.

MR. DANIEL LEVY: Good afternoon, Your Honor,  
Daniel Levy from McCool Smith on behalf of Andrew Caspersen  
who's sitting to my right.

THE COURT: Good afternoon. Mr. Caspersen, I'm  
Judge Francis. The purpose of this proceeding is to inform  
you of certain rights that you have, to inform you of the  
charges against you, to consider whether counsel should be  
appointed for you, and to decide under what conditions you  
should be released. Date and time of arrest please.

MS. MAGDO: Saturday, March 26 at approximately  
5:30 p.m.

THE COURT: Mr. Caspersen, you have the right to  
remain silent. You are not required to make any  
statements. Even if you have made any statements to the  
authorities, you need not make any further statements.  
Anything that you do say can be used against you.

You have the right to be released either

1  
2 conditionally or unconditionally pending trial unless I  
3 find that there are no conditions that would reasonably  
4 assure your presence in court and the safety of the  
5 community.

6           You have the right to be represented by counsel  
7 during all court proceedings, including this one, and  
8 during all questioning by the authorities. If you cannot  
9 afford an attorney, I will appoint one today to represent  
10 you, but I note that you've retained counsel.

11           The complaint charges you in two counts. Count 1  
12 charges securities fraud in violation of Title 15 of the  
13 United States Code §§ 78(j)(b) and 78(f)(f) and 17 Code of  
14 Federal Regulations § 240.10(b)(5). If convicted on that  
15 count, you'd be subject to a term of imprisonment of up to  
16 20 years, a fine of up to \$5 million, and a \$100 special  
17 assessment. Count 2 charges wire fraud in violation of  
18 Title 18 of the United States Code § 1343. If convicted on  
19 that count, you'd be subject to a term of imprisonment of  
20 up to 20 years, a fine of up to \$250,000, and a \$100  
21 special assessment.

22           Mr. Levy, have you had an opportunity to review  
23 the complaint with your client?

24           MR. LEVY: Mr. Caspersen has reviewed the  
25 complaint, and we waive its public reading.

1  
2 THE COURT: Mr. Caspersen, you have the right to  
3 a preliminary hearing at which the Government will have the  
4 burden of establishing that there is probable cause to  
5 believe that the crime for which you are charged has been  
6 committed and that you are the person who committed it. If  
7 probable cause is not established, you will be released  
8 from the charges. If it is established, the Government  
9 will then have a right to proceed to trial against you.

10 If you're in custody, you have the right to a  
11 preliminary hearing within 14 days. If you are not in  
12 custody, the preliminary hearing will be held within 21  
13 days. But no preliminary hearing will be held if before  
14 the date that it's scheduled you are indicted by a grand  
15 jury or an information is filed against you by the  
16 Government. Does the Government have a bail  
17 recommendation?

18 MS. MAGDO: Well, Your Honor, I've talked with  
19 counsel for the defendant, and there are a few things that  
20 we agree on. One is that he is bailable. He has  
21 surrendered his passport. We agree that he would limit his  
22 travel to the Southern District of New York, Connecticut,  
23 and New Jersey. And he will seek mental health treatment.

24 Where the two sides disagree is on the amount of  
25 the bond and the amount of assets that will secure the

1  
2 bond. Defense counsel has proposed a \$1 million bond  
3 secured by \$50,000 in cash. The Government feels that that  
4 is far too low to assure his appearance in court. If I  
5 could just give Your Honor some facts that might be  
6 helpful.

7           Mr. Caspersen and his wife own an apartment in  
8 Manhattan that is unencumbered and is worth between \$1.5  
9 and \$2.3 million. They also have equity in a house in  
10 Bronxville in the amount of approximately \$1.1 million. In  
11 addition, Mr. Caspersen has had significant income over the  
12 last three years. Last year, 2015, his total compensation  
13 in terms of his salary and his cash bonus was \$3.68  
14 million. In 2014 his total compensation was \$4.5 million.

15           I'd also like to stress how sophisticated the  
16 scheme was, Mr. Caspersen incorporated fake companies that  
17 resembled real firms and real private equity funds. He  
18 used over a dozen bank accounts in the names of these shell  
19 companies. He created a fake domain name, he invented  
20 identities of people, and he used identifies of real  
21 individuals without their knowledge. He also went so far  
22 as to register a phone number for one of the fake  
23 individuals.

24           He even stole money from his own employer, and he  
25 came up with an elaborate story to tell his investors. And

1  
2 now he say she has no assets, and we wonder why he would  
3 tell the truth now when he's still lying to people all  
4 along.

5           We think he's a flight risk because he used shell  
6 company bank accounts through which he moved tens of  
7 millions of dollars. And, frankly, we don't know where all  
8 of that money went at this point. It may have been  
9 transferred to other people, it may have been transferred  
10 abroad. We just don't have any visibility into where all  
11 the money went. In addition, he has substance abuse  
12 issues, serious mental health issues. And, finally, there  
13 is a potential maximum term on each count of twenty years,  
14 and aside from the statutory max, just given the loss  
15 amount in this case, the guidelines would be well over ten  
16 years.

17           It's also concerning to the Government that Mr.  
18 Caspersen has a mother and three brothers, all of whom are  
19 employed professionals, and only one of them is willing to  
20 come forward and that's to put down \$50,000 in cash. It's  
21 worth noting that when Mr. Caspersen's father died, excuse  
22 me, in 1998, when he sold his company, he was worth  
23 approximately \$1 billion. This is not an ordinary case,  
24 this is not an ordinary family with ordinary assets.

25           So for those reasons the Government would ask for

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a significantly higher bond with significantly more security.

THE COURT: Well, tell me exactly what that means.

MS. MAGDO: We would ask for a \$20 million bond secured by \$10 million in property.

THE COURT: Where does that \$10 million in property come from?

MS. MAGDO: Well, for one thing if he puts up his two residents, which at a very minimum he should be required to do, that would be about close to \$4 million in equity, and we think that the family should be able to pledge additional assets to help make sure that he appears in court.

THE COURT: You mean the balance of the conditions that the Government's requesting?

MS. MAGDO: He surrendered his passport, so we're done with that. Don't apply for new travel documents. That his travel be restricted to the Southern District of New York, New Jersey, Connecticut. That the usual pretrial conditions that he report to and cooperate with Pretrial Services and also mental health treatment.

THE COURT: Substance abuse?

MS. MAGDO: I would say at the discretion of



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Pretrial Services.

THE COURT: Thank you. Mr. Levy.

MR. LEVY: Your Honor, thank you very much. I appreciate it. Just a few things. One of the things that Miss Magdo ended her discussion with, a suggestion that the defendant's father when he died was worth a billion dollars. I told Miss Magdo before this proceeding that that was based on an erroneous accounting in a newspaper. It's preposterous.

MS. MAGDO: I corrected myself. I said when he sold his company. I misspoke at first.

MR. LEVY: He was never worth a billion dollars, not when he sold his company, not when he owned his company, not when he died. He died in debt. So the notion that somehow the defendant's father had a billion dollars and now the defendant has access to it, I would note that the defendant is living in a house, one of the homes that he owns has a significant mortgage on it. If he had access to some mysterious billion dollars, you would think he would not have a \$2 million mortgage on his home. He doesn't. It's preposterous. I would've expected more. But that was the suggestion that counsel made.

Mr. Caspersen has incredibly strong ties to the community. He has three brothers. He has a wife who's

1  
2 here in court. One of his brothers is here in court. He  
3 has two young children; they're almost one and three. He  
4 has a mother who lives in Florida. Other than travel for  
5 work and for vacations, he's had no travel outside the  
6 United States. He would not have the foggiest idea of how  
7 to obtain fake travel documents to allow him to travel  
8 outside the United States.

9           The cosigners that Mr. Caspersen's proposing are  
10 his wife, who's not presently working, she's on a  
11 sabbatical, but she has, she makes well over \$200,000 in  
12 her job. She jointly owns a home and an apartment with Mr.  
13 Caspersen. We would propose his brother, who's also here  
14 in court, who makes over a half a million dollars a year,  
15 and who owns his own together outright with his wife. And  
16 Mr. Caspersen's sister-in-law would also cosign a bond. We  
17 would propose that these three cosigners would be more than  
18 sufficient to guarantee the defendant's return to court.

19           The question is not sort of what assets he has.  
20 He doesn't have very much, as you can see from the Pretrial  
21 Services report. I'll get to that in a moment. The  
22 question is what are the conditions that would ensure his  
23 return to court, and we submit that a \$2 million personal  
24 recognizance bond cosigned by these three people, and if  
25 necessary \$50,000 in cash as security for the bond would be

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2 sufficient for this defendant to return to court.

3           The notion that a \$20 million bond is necessary  
4 secured by \$10 million in property, it's preposterous given  
5 the assets that this defendant has. There's no secret pot  
6 of money out there that Mr. Caspersen has the ability to  
7 tap into on his own. It's just not there, and the bail  
8 package suggested by the Government is so far beyond what  
9 is appropriate in this case. The defendant's proposed bail  
10 package will ensure that he returns to court.

11           I wanted to make a couple of points about the  
12 Pretrial Services report so you're, for the benefit of the  
13 Court. On page 5, in the paragraph starting, "The  
14 defendant reported," the second half of that sentence where  
15 the Pretrial Services officer indicates "but did not  
16 believe it was excessive." What Mr. Caspersen actually  
17 said was that he drank more than he should. We submit that  
18 as part of the conditions that alcohol treatment be  
19 ordered. As you can see from the information above, he's a  
20 daily user of alcohol.

21           On the prior page, page 4, in the paragraph  
22 beginning, "The defendant advises," at the end of that  
23 first sentence where the Pretrial Services report indicates  
24 "but has had thoughts," I'm trying to be a little  
25 circumspect. I'm quite confident Your Honor's following

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me. Those thoughts were quite recent, and I think that that's what generates the appropriateness of mental health treatment as directed by the Pretrial Services officer. The defendant's family is very anxious to make sure that he gets the appropriate kind of treatment given the recency of the issues that I just referred to.

And then one minor thing on page 3 of the Pretrial Services report, under the category of Land. It's reported as 1.1 million. That's really just the equity in the home that is owned in Bronxville. It's not some unimproved piece of land that's located out there.

THE COURT: I'm not clear on the property.

MR. LEVY: Okay.

THE COURT: We're talking about the Bronxville residence which has an equity of 1.1 million, and there's an apartment?

MR. LEVY: Correct, and there's an apartment in Manhattan that the defendant owns jointly with his wife that's worth, and that's reflected in the second paragraph on page 3, worth somewhere between 1.5 and 2.3 million, and they own it outright.

So, Your Honor, we're not engaging in positional bargaining by suggesting much lower than the Government. We just think that the - so that the Court sort of lands in

1  
2 the middle. We just think that the Government's suggestion  
3 of a \$20 million bond secured by \$10 million property is  
4 preposterous. It's so far out of bounds given this  
5 defendant's assets.

6           There's some sophisticated aspects of the conduct  
7 that's charged in the complaint. There's also rather some  
8 amateur aspects of the conduct charged in the complaint. I  
9 don't think we need to go tit for tat about sort of how  
10 sophisticated the charged conduct was. The point is what  
11 is going to ensure Mr. Caspersen's return to court, and we  
12 submit that the bail package that is proposed by cosigners  
13 with real financial wherewithal, some property in the form  
14 of some cash put up will guarantee this defendant's return  
15 to court. He simply wouldn't know where, the first place  
16 to go.

17           THE COURT: I guess the disturbing point to me is  
18 that we, apart from all of the factors that we've  
19 discussed, we still have the issue of if we credit the  
20 allegations in the complaint, we have the issue of  
21 unaccounted for assets.

22           MR. LEVY: I think the fair inference from the  
23 conduct in the complaint is that the losses associated with  
24 the (indiscernible) in charge have eviscerated any assets.  
25 There's just no (inaudible).

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THE COURT: Thank you. Miss Magdo, I'll hear from you, but I also wanted to know what your recommendation was with respect to cosigners.

MS. MAGDO: Yes. Sorry, I forgot to address that originally. The three financially responsible people is fine, and if after they're interviewed, those three individuals turn out to be financially responsible, we feel they would be sufficient to sign a bond.

With respect to the outstanding money, there's just no basis for saying, based on the complaint or anything else, that the money has been accounted for. There's a \$9 million wire out of his personal brokerage account December 4 that is still unaccounted for. So we just don't know where the money is. For law enforcement purposes, we took this case out quite quickly, and there are just assets out there. Maybe they were lost, but we just don't know.

THE COURT: Thanks. Anything further?

MR. LEVY: Your Honor, just one last thing. I think -- I would submit that the defendant is appropriate to be released on his own signature whatever amount of bond that the Court sets. Two of his proposed cosigners, who I have little reason to think will be rejected by the Government, are here in court, and they're willing to

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cosign the bond today.

THE COURT: So it's not on his signature. It's on the signature --

MR. LEVY: On his signature and the signature of two of the proposed cosigners.

THE COURT: All right. On the basis of the Pretrial Services report and the complaint and proffers of counsel, I will release Mr. Caspersen on a \$5 million personal recognizance bond secured by the two properties that we've referred to, that is the Bronxville property and the apartment co-owned with his wife, as well as \$50,000 in cash. That bond should be cosigned by three financially responsible persons. Mr. Caspersen may be released on his signature together with that of two cosigners with the property and cash and the remaining cosigner to be provided within two weeks, which is April 11.

He shall surrender all travel documents and not apply for new ones. His travel shall be remitted to the Southern and Eastern Districts of New York, the District of New Jersey, and the District of Connecticut. He shall be subject to strict Pretrial Services supervision, including alcohol testing and treatment and mental health treatment to the extent that the Pretrial Services office deems necessary. I think that's all the conditions. Was there

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anything else?

MR. LEVY: I think it is. The one issue that presents some complication is that one of the pieces of property is a New York City co-op. They're difficult to put up as security in connection with a bond because sort of the ownership limitations, and I would hope that the Court and the Government would entertain substituting out a different piece of property if it proves impossible to post the New York City co-op.

THE COURT: Let's see where we go on that.

MR. LEVY: Okay.

THE COURT: If there's nothing else, preliminary hearing date.

MR. LEVY: We would waive to the 30<sup>th</sup> day.

THE COURT: April 26. Thank you all.

MR. LEVY: Thank you, Your Honor.

(Whereupon the matter is adjourned.)



C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of United States v. Caspersen, Docket #16m2011, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature\_\_\_\_\_

Date: April 2, 2016